



FYI Sales 1

How to Document Sales to Retailers, Tax-Exempt Organizations and Direct Pay Permit Holders

The information contained in this FYI is for vendors who must determine whether a customer is eligible to purchase goods without paying sales tax.

GENERAL INFORMATION

In general, the circumstances in which a customer is not required to pay sales tax are:

- businesses purchasing goods for resale.
- charitable or religious organizations that use the goods in the course of their regular charitable or religious functions.
- federal, state and local governmental agencies that use the goods in the course of their regular governmental functions.
- businesses purchasing goods with a "direct pay permit" issued by the Colorado Department of Revenue.

If there is a dispute between the buyer and the seller as to whether a transaction is exempt from taxation, the seller must collect sales tax and the buyer must pay it. The buyer may then apply to the Colorado Department of Revenue for a refund of the taxes under dispute with a Claim for Refund (DR 0137). The statute of limitations for these refund applications is 60 days. [§§39-26-102 (22) and 39-26-703(2)(a), C.R.S.] Remember, it is the **vendor** who is ultimately responsible for collection of sales taxes.

PURCHASES FOR RESALE

Purchases where the buyer will resell the goods as part of the buyer's regular business activity are exempt from sales tax. Sales taxes must be paid on all purchases for business or personal uses. The buyer does not have the option of later paying consumer use tax on purchases for business or personal use.

The seller must record the sales tax account numbers for all sales to vendors for resale. If the buyer has a business outside Colorado and does not have a business location in Colorado, the seller may accept the license number from the buyer's home state. The buyer must meet the requirements for sales tax exemption outlined above.

It is the seller's responsibility to collect sales tax in questionable situations. For example, if the buyer is purchasing office supplies and the buyer's business does not sell office supplies, the seller should collect the sales tax and not permit use of the buyer's resale tax account number to purchase tax-free.

If a buyer has a "direct pay permit" from the Colorado Department of Revenue, the seller is required to obtain a copy of the direct pay permit and keep it on file. The purchases must be paid for directly from the qualified buyer's (the business) funds, not the funds of an individual.

PURCHASES BY CHARITABLE AND RELIGIOUS ORGANIZATIONS

If the Department of Revenue has granted an organization exemption from paying sales tax, the organization will possess a Colorado tax exemption number. These numbers begin with "98" followed by five more digits. The purchaser must present this number to vendors when making tax-exempt purchases. For each sale, vendors must record this number, date of sale, item(s) or service(s) purchased, and name of the organization. Keep this record in your permanent files for audit purposes.

Determining Exempt Purchases

Not all purchases made by tax-exempt organizations are nontaxable. [§39-26-704, C.R.S.] You may sell tangible personal property or taxable services tax free only if both of the following requirements are met:

1. **If the purchase totals less than \$100:** The purchaser must show a copy of the exemption certificate (or have a copy of the certificate on file with the vendor), and must sign an affidavit declaring the purchase is made from the organization's funds.

2. **If the purchase totals \$100 or more:** Payment for the item or service must be made with the organization's check or credit card, and not via cash or an individual's check or credit card, and the organization will not be reimbursed by any person(s) for the use or consumption of the item or service.
3. The item or service is used by the organization in conducting its **regular** religious, charitable, scientific, literary, or educational business. This may also include fundraising activities. See FYI Sales 2 Sales Tax Exempt Status for Charitable Organizations: Application Requirements.

For example, a church that has tax-exempt status would have to pay applicable sales and lodging taxes to a hotel or motel if church members are on a ski vacation, even if the lodging services are paid with a church check. If, however, the church members are attending a religious seminar, the lodging would be tax exempt **if** paid with a church check or credit card bearing the church's name, and individuals are not reimbursing the church. See *Security Life & Accident Co. v. Temple*, 492 P.2d 63 (Colo. 1972) and *Colorado Department of Revenue v. City of Aurora*, 32 P.3d 590 (Colo. App. 2001)

If you, the vendor, have any doubts about whether a sale meets the above criteria, collect tax on the sale and advise the purchaser to file a Claim for Refund (DR 0137).

Sales to Out-of-State Tax-Exempt Organizations

Such organizations will not have a Colorado tax exemption number, and may or may not have a tax exemption number from their home state. Determine whether the sale meets the eligibility criteria for a nontaxable sale, as explained above. If it does, have a representative sign a statement or affidavit. You may keep copies on hand for use when approached by out-of-state groups claiming tax-exempt status.

This procedure places the burden of proof on the organization's representative and protects the vendor should the department discover that the organization falsely claimed tax-exempt status or that the item or service purchased did not meet either or both of the requirements for tax-exempt sales.

Because not all states issue tax exemption numbers, the vendor may want to request and record additional information, such as a driver's license number, to positively identify the person who signs the affidavit. You may also want to use the affidavit procedure for Colorado tax-exempt organizations as an additional protection for your business.

PURCHASES BY GOVERNMENT AGENCIES

Sales to the United States government and to the State of Colorado, its departments and institutions, and its political subdivisions (cities, counties, school districts, state higher education institutions and special taxing districts) are exempt by statute. [§39-26-704 (1), C.R.S.] Governmental agencies need not obtain an exemption number from the state. Sales to federal credit unions are exempt under federal government rules.

Purchases must be made for use within the agency's governmental capacities and be paid for by warrant, check, or qualifying government credit cards drawn on governmental funds. (For more information regarding the use of government credit cards see FYI Sales 63 "Government Purchases Exemptions"). Evidence of this must be retained in the seller's records. A purchase by a government employee using cash or a personal check, even if the employee presents a tax exemption number and plans to be reimbursed, is not tax-exempt.

For a detailed discussion of tax-exempt sales to government entities and foreign diplomats, request FYI Sales 63 "Government Purchases Exemptions."

TAX-EXEMPT CONSTRUCTION PROJECTS

Building materials for construction work on property owned by tax-exempt organizations—religious, charitable and governmental—may be purchased tax free. However, the purchaser must have an Exemption Certificate. To obtain the certificate, the contractor must submit an "Application for Exemption Certificate" (DR 0172) to the Department of Revenue.

The sales and use tax exemption applies to materials that become part of the structure, highway, road, street or other public works owned and used by the tax-exempt organization. Also, electricity and most fuels consumed in performing real property construction are exempt. The purchase or rental of equipment, supplies and other materials by the contractor is **taxable**.

PURCHASES MADE WITH A DIRECT PAY PERMIT

Vendors making sales to qualified purchasers who have a direct pay permit are not required to collect the state and local taxes due on such sales provided the qualified purchaser has a valid direct pay permit number.

These numbers will either begin with 90 or 090 followed by five digits **OR** the number will be an 8-digit number followed by a dash and four digits. **The permit will have the words Direct Pay Permit in the upper left corner**

The purchase must be paid for directly with funds of the qualified purchaser (not the personal funds of an individual). However, the direct pay permit is not applicable to county lodging tax and/or county rental tax and is not applicable to self-collected and administered municipal sales taxes. [§§ 30-11-107.5 and 30-11-107.7, C.R.S.] Contact these municipalities directly for their rules or direct pay procedures. **The vendor is required to keep on file a copy of the qualified purchaser's direct pay permit.** Refer to FYI Sales 78 "Direct Pay Permit for Colorado Sales Tax," for more information.

FYIs provide general information concerning a variety of Colorado tax topics in simple and straightforward language. Although the FYIs represent a good faith effort to provide accurate and complete tax information, the information is not binding on the Colorado Department of Revenue, nor does it replace, alter, or supersede Colorado law and regulations. The Executive Director, who by statute is the only person having the authority to bind the Department, has not formally reviewed and/or approved these FYIs.